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DaimlerChrysler
Intellectual Capital Corporation

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To: Examiner Ronald Laneau

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Pages: 15 + cover

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Date: March 2, 2007

Group Art Unit: 3714

Re: Application No. 09/967,095

See the attached Transmittal Form (in duplicate) and Appeal Brief

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Susan J. Sidwell



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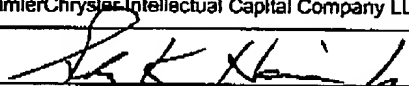
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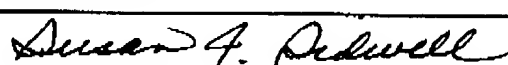
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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/967,095
	Filing Date	September 28, 2001
	First Named Inventor	Nagel et al.
	Group Art Unit	3714
	Examiner Name	Ronald Laneau
Total Number of Pages in This Submission	Attorney Docket Number	705581US1

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Firm or Individual name	DaimlerChrysler Intellectual Capital Company LLC	Attorney/Agent Name Gordon K. Harris, Jr.	Reg. No. 28,615
Signature			
Date	March 7, 2007		

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Firm or Individual name	DaimlerChrysler Intellectual Capital Company LLC	Attorney/Agent Name	Reg. No.
		Gordon K. Harris, Jr.	28,615
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Attorney Docket No. 705581US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group Art Unit: 3714)
Examiner: Ronald Laneau)
Serial No. 09/967,095)
Applicants: Nagel et al.)
Filed: September 28, 2001)
For: MARKET CENTER BASED)
PURCHASING SYSTEM AND)
METHOD)
Attorney Docket No.: 705581US1)

APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is an appeal from the Final Rejection of Claims 4, 6—8, 12—14, 18, and 19 under 35 U.S.C. § 103 (a) in the Final Office Action mailed November 24, 2006.

I. REAL PARTY IN INTEREST

The real party in interest is DaimlerChrysler Corporation, a corporation organized and existing under the laws of the State of Delaware U.S.A., and having a principal place of business in Auburn Hills, Michigan, U.S.A.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences which would directly affect or be directly affected by or have a bearing on the Board's decision in the instant Appeal.

II. STATUS OF THE CLAIMS

Claims 1—3, 5, 9—11 and 15—17 have been withdrawn from consideration and were previously canceled.

Claims 4, 6—8, 12—14, 18, and 19 are pending in this application. All pending Claims have been rejected and are the subject of this Appeal. A copy of Claims 4, 6—8, 12—14, 18, and 19 is set forth in the Appendix hereto.

IV. STATUS OF AMENDMENTS

The Final Office Action of November 25, 2005 included rejections to the Claims under 35 U.S.C. § 103(a) as being unpatentable over Barnes et al. (U.S. Patent No. 5,970,475) in view of Yang (U.S. Publication No. 2002/012550 A1). Applicants filed a Response After Final Rejection on January 19, 2006, with no further amendment to the pending Claims. A Notice of Appeal was filed February 23, 2006. An Appeal Brief was filed on April 11, 2006.

In response to the Appeal Brief, prosecution was reopened by the Examiner in the Office Action dated June 28, 2006 where the Claims were rejected under 35 U.S.C. § 103(a) as being unpatentable over Barnes et al. (U.S. Pat. No. 5,970,475) in view of Boyd (U.S. Pat. No. 6,963,854). Applicants filed a Response on September 19, 2006. The Final Office Action of November 24, 2006 finally rejected the Claims as being unpatentable over Barnes et al. in view of Yang, as in the Final Office Action of November 25, 2005. A Notice of Appeal was filed January 17, 2007.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

In a first aspect of Applicants' invention set forth in independent Claim 18, a method of procuring goods and services through a computer based market center system (112 of Fig. 1 or 220 of Fig. 2) has a website accessible by a plurality of entities (110 of Fig. 1 or 214 of Fig. 2) via

the Internet (116 of Fig. 1) and includes arranging with a plurality of suppliers (114 of Fig. 1 or 222 of Fig. 2), each having an Internet website, to participate in offering goods and services to the entities via the website of the market center system. (Paragraph 23, lines 1—6). The method further includes negotiating, with at least a subset of the suppliers, prices for their respective goods and services at which said entities can purchase the respective goods and services. (Paragraph 17, lines 3—10). The method further allows said entities (110 of Fig. 1 or 214 of Fig. 2) to place orders with any of the at least subset of suppliers (114 of Fig. 1 or 222 of Fig. 2) for respective goods and services via purchaser websites and the market center website. The method further allows said entities an option of obtaining via purchaser websites in the market center website a price quotation from any of the at least subset of suppliers. (Paragraph 23, lines 10—14. Also, see Figs. 3a, 3b in conjunction with the specification at Paragraphs 24—28). Information is collected on said purchases made by said entities via said computer based market center system and on quotes received directly from said suppliers by said entities (step 338, Fig. 3b in conjunction with Paragraph 28, lines 5—8 and Fig. 5, step 526 in conjunction with Paragraph 33, lines 7—10) and analyzing said information at said computer based market center system. (Paragraph 21, lines 1—3. Also, see Fig. 4 in conjunction with the specification at Paragraph 29, lines 6—7). The method then determines if any of said quotes were for goods or services having a previously negotiated price and if so, whether said quotes for that good or service were at prices more favorable than said previously negotiated prices. (Fig. 4, step 416 in conjunction with Paragraph 29, lines 7—10. Also, see Fig. 5, step 528 in conjunction with Paragraph 33, lines 10—18).

In another aspect of the invention as set forth in Applicants' independent claim 19, a purchasing system for procuring goods and services bought by a plurality of entities having a common predetermined relationship includes a computer based market center having a market center website accessible by the entities via the Internet. (112 of Fig. 1 or 220 of Fig. 2). A

plurality of supplier internet websites (114 of Fig. 1 or 222 of Fig. 2) each accessible by the entities via the market center website additionally forms part of the system. A database (transaction database 113 of Fig. 1) stores information concerning supplier prices and transactions entered into between the entities and suppliers associated with the supplier websites via the Internet. The market center computer is operative to analyze said transactions (see Paragraph 21, lines 1—3. Also, see Fig. 4 in conjunction with Paragraph 29, lines 1—7) to determine if any involve purchases at prices more advantageous than the supplier prices for said goods or services stored in said database. (Fig. 4, step 416 in conjunction with Paragraph 29, lines 7—10. Also, see Fig. 5, step 528, in conjunction with Paragraph 33, lines 10—18).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Presented for review is the rejection of Claims 4, 6—8, 12—14, 18, and 19 under 35 U.S.C. § 103(a) as being unpatentable over Barnes et al. (U.S. Patent No. 5,970,475) in view of Yang (U.S. Publication No. 2002/0120550 A1).

VII. ARGUMENT

Rejection Under 35 U.S.C. § 103

Claims 4, 6—8, 12—14, 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Barnes et al (U.S. 5,970,475) in view of Yang (U.S. 2002/0120550 A1). The rejection is respectfully traversed.

A careful review of Barnes et al. reveals no disclosure or suggestion of collecting information on the purchases made by participating entities via the computer based marketing center system and on quotes received from suppliers and analyzing the collected information to determine if any of the quotes were at prices more favorable than a previously negotiated price (amended Claim 18), nor a disclosure or suggestion of a computer based market center being

operative to analyze transactions to determine if any involve purchases at prices more advantageous than supplier prices for the goods or services stored in the system's database (amended Claim 19). The Examiner has conceded this point in rejecting all the Claims over the combination of Barnes et al. with Yang, citing Yang for the alleged teaching of analyzing collected information, determining quotes and determining whether the quotes for a good or services were at prices more favorable than previously negotiated prices.

It is respectfully submitted that the combined teachings of Barnes et al. and Yang fail to show all the limitations of independent Claims 18 and 19.

A careful review of Yang, especially paragraph 22, claim 5, Fig. 2 and paragraphs 32—39 shows no teaching of analyzing the collected information to determine if any of the quotes are at prices more favorable than a previously negotiated price (claim 18) or a computer based market center being operative to analyze transactions to determine if any involve purchases at prices more advantageous than supplier prices for the goods or services stored in the system's database (claim 19).

Yang is concerned with real time negotiation of a price and is silent as to analyzing transactions relative to previously negotiated prices. Yang's analysis system concerns reports covering which types of products are well sold, which types of products have larger gross profit and the whole enterprise profit (see page 5, paragraph 0079). Yang discloses nothing suggesting determining whether previous quotes are now being undercut by current transactions.

The Final Office Action of November 24, 2006 includes the same rejections of the Claims as the Final Office Action of November 25, 2005; and, as best understood by Applicants, does not appear to provide additional reasons for the rejections other than those put forth in the earlier Final Office Action. In the Final Office Action of November 24, 2005, responding to Applicants' argument that the Yang reference does not disclose analyzing transactions to determine whether a specific entity has negotiated a price better than that previously negotiated at the market center,

the Examiner asserted that:

Yang not only discloses a report management system that comprises choosing the type of report wherein the type of report comprises for instance the enterprise balance report, the enterprise asset report, the enterprise working gross profit report, and the enterprise net profit report but also discloses that other types of reports can be generated (the foregoing list of reports is not restricting) which would certainly include a report analyzing transactions relative to previously negotiated prices or a report for determining if any of the quotes are at prices more favorable than a previously negotiated price or if any involve purchases at prices more advantageous than supplier prices for the goods or services stored in the system's database (page 5, [0079], lines 11—21).

This position essentially presumes inherency of Applicants' claimed limitation in Yang. (The inherent teaching of a prior art reference ... arises both in the context of anticipation and obviousness. In re Napier, 55 F.3d 610, 34 USPQ2d 1782 (Fed. Cir. 1995)). It is respectfully submitted that this allegation of the Examiner is mere speculation improperly using hindsight resort to Applicants' teachings. Inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances does not establish inherency. In re Robertson, 169 F.3d 743, 49 USPQ2d 1949 (Fed. Cir. 1999). The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993).

Yang is not concerned with analyzing buyer negotiated prices with a prior market center negotiated advertised price to determine whether the market center should re-negotiate terms with a given supplier. There is simply no suggestion in Yang of this type analysis. Hence, the following limitation of independent claim 18 is not taught by the combination of cited references:

determining if any of said quotes were for goods or services having a previously negotiated price and if so, whether said quotes for that good or service were at prices more favorable than said previously negotiated prices.

Similarly, the following limitation of independent claim 19 is not taught by the cited combination of references:

said computer based market center is operative to analyze said transactions to determine if any involve purchases at prices more advantageous than the supplier prices for said goods or services stored in said database.

VIII. SUMMARY

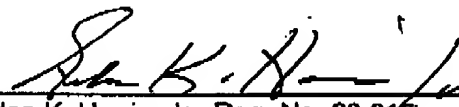
The cited references, taken separately or in combination, fail to disclose or suggest every limitation in Applicants' pending Claims. Therefore, the Examiner has failed to establish a *prima facie* case of unpatentability, and the rejection of Claims 4, 6—8, 12—14, 18, and 19 under 35 U.S.C. § 103(a) should be reversed.

Respectfully submitted,

Mark Nagel et al.

Dated: March 6, 2007

BY: _____


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CLAIMS APPENDIX

Listing of Claims

18. A method of procuring goods and services through a computer based market center system having a website accessible by a plurality of entities via the Internet, the method comprising:

arranging with a plurality of suppliers, each having an Internet website, to participate in offering goods and services to the entities via the website of the market center system;

negotiating with at least a subset of said suppliers prices for their respective goods and services at which said entities can purchase the respective goods and services;

allowing said entities to place orders with any of the at least a subset of suppliers for respective goods and services via purchaser websites and the market center website; and allowing said entities an option of obtaining via purchaser websites and the market center website a price quotation from any of the at least a subset of suppliers;

collecting information on said purchases made by said entities via said computer based market center system and on quotes received directly from said suppliers by said entities and analyzing said information at said computer based market center system; and

determining if any of said quotes were for goods or services having a previously negotiated price and if so, whether said quotes for that good or service were at prices more favorable than said previously negotiated prices.

4. The method of claim 18, further including renegotiating said negotiated price for one of said goods and services when results of analyzing said information indicate that a more favorable price than the negotiated price for that good or service is being offered.

6. The method of claim 18 wherein said plurality of entities having a common predetermined relationship comprise an original equipment manufacturer and its dealerships.

7. The method of claim 18 wherein said plurality of entities having a common predetermined relationship comprise a franchise.

8. The method of claim 18 wherein said plurality of entities having a common predetermined relationship comprise individuals that are members of a club.

12. The method of claim 18 wherein information concerning purchases made by and quotes obtained by said entities via said computer based market center system are stored in a database.

13. The method of claim 18 further including a host organization paying said suppliers for purchases made from said suppliers via said computer based market

center system by said entities and said host organization billing said entities for said purchases.

14. The method of claim 13, further including the step of said host organization operating said computer based market center system.

19. A purchasing system for procuring goods and services by a plurality of entities having a common predetermined relationship, the purchasing system comprising:

- a computer based market center having a market center website accessible by the entities via the Internet;

- a plurality of supplier Internet websites, each accessible by the entities via the market center website; and

- a database storing information concerning supplier prices and transactions entered into between the entities and suppliers associated with the supplier websites via the Internet, wherein said computer based market center is operative to analyze said transactions to determine if any involve purchases at prices more advantageous than the supplier prices for said goods or services stored in said database.

EVIDENCE APPENDIX

NONE

RELATED PROCEEDINGS APPENDIX

NONE

09/967,095

5